

**Assembly Bill No. 590**

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Passed the Assembly September 10, 2009

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*Chief Clerk of the Assembly*

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Passed the Senate September 9, 2009

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, and to amend, repeal, and add Sections 68085.1 and 70626 of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code, relating to the practice of law.

## LEGISLATIVE COUNSEL'S DIGEST

AB 590, Feuer. Legal aid.

(1) The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term "legal aid," or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill would subject a person or organization that violates this prohibition to specified civil liability.

This bill would, commencing July 1, 2011, and subject to funding specifically provided for this purpose, require the Judicial Council to develop one or more model pilot projects in selected courts for 3-year periods pursuant to a competitive grant process and a request for proposals. The bill would provide that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected

by the Judicial Council, as specified. The bill would provide that each project shall be a partnership between the court, a qualified legal services project that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The bill would require the lead legal services agency, to the extent practical, to identify and make use of pro bono services in order to maximize available services efficiently and economically. The bill would provide that the court partner is responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices, as specified. The bill would require a local advisory committee to be formed to facilitate the administration of the local project and to ensure that the project is fulfilling its objectives. The bill would require the Judicial Council to conduct a study to demonstrate the effectiveness and continued need for the pilot program, and to report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016.

(2) Existing law sets the fees at \$25 or \$30 for various court services, including, but not limited to, issuing a writ for the enforcement of an order or judgment, issuing an abstract of judgment, recording or registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers' Compensation Law.

This bill would provide, from July 1, 2011, to June 30, 2017, inclusive, that \$10 of each fee collected pursuant to these provisions shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program described in (1) above. Commencing July 1, 2017, the bill would reduce each of those fees by \$10.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) There is an increasingly dire need for legal services for poor Californians. Due to insufficient funding from all sources, existing programs providing free services in civil matters to indigent and disadvantaged persons, especially underserved groups such as

elderly, disabled, children, and non-English-speaking persons, are not adequate to meet existing needs.

(b) The critical need for legal representation in civil cases has been documented repeatedly, and the statistics are staggering. California courts are facing an ever increasing number of parties who go to court without legal counsel. Over 4.3 million Californians are believed to be currently unrepresented in civil court proceedings, largely because they cannot afford representation. Current funding allows legal services programs to assist less than one-third of California's poor and lower income residents. As a result, many Californians are unable to meaningfully access the courts and obtain justice in a timely and effective manner. The effect is that critical legal decisions are made without the court having the necessary information, or without the parties having an adequate understanding of the orders to which they are subject.

(c) The modern movement to offer legal services for the poor was spearheaded by Sargent Shriver in 1966, aided by the American Bar Association, then headed by future Supreme Court Justice Lewis Powell, driven by the large disparity that existed between the number of lawyers available for poor Americans compared with the availability of legal services for others. While much progress has been made since then, significant disparity continues. According to federal poverty data, there was one legal aid attorney in 2006 for every 8,373 poor people in California. By contrast, the number of attorneys providing legal services to the general population is approximately one for every 240 people – nearly 35 times higher.

(d) The fair resolution of conflicts through the legal system offers financial and economic benefits by reducing the need for many state services and allowing people to help themselves. There are significant social and governmental fiscal costs of depriving unrepresented parties of vital legal rights affecting basic human needs, particularly with respect to indigent parties, including the elderly and people with disabilities, and these costs may be avoided or reduced by providing the assistance of counsel where parties have a reasonable possibility of achieving a favorable outcome.

(e) Expanding representation will not only improve access to the courts and the quality of justice obtained by these individuals, but will allow court calendars that currently include many

self-represented litigants to be handled more effectively and efficiently. Increasing the availability of legal representation for litigants who must currently represent themselves or face loss of their legal rights is a key priority of the Judicial Council and Chief Justice Ronald M. George. As the Chief Justice has noted, the large and growing number of self-represented litigants is one of the most challenging issues in the coming decade, imposing significant costs on the judicial system and the public by impairing the ability of the courts to efficiently process heavy caseloads, and eroding the public's confidence in our judicial system. While court self-help services are important, those services are insufficient alone to meet all needs. Experience has shown that those services are much less effective when, among other factors, unrepresented parties lack income, education, and other skills needed to navigate a complex and unfamiliar court process, and particularly when unrepresented parties are required to appear in court or face opposing counsel. Recognizing that not all indigent parties may be allowed representation, even when they have meritorious cases, and that self-help services cannot meet the needs of all unrepresented parties, courts presented with disputes regarding basic human needs that involve low-income litigants facing parties who are represented by counsel have a special responsibility to employ best practices designed to ensure that unrepresented parties obtain meaningful access to justice and to guard against the involuntary waiver or other loss of rights or the disposition of those cases without appropriate information and regard for potential claims and defenses, consistent with principles of judicial neutrality. The experience and data collected through a pilot program will assist the courts and the legal community in developing new strategies to provide legal representation to overcome this challenge.

(f) The doctrine of equal justice under the law is based on two principles. One is that the substantive protections and obligations of the law shall be applied equally to everyone, no matter how high or low their station in life. The second principle involves access to the legal system. Even if we have fair laws and an unbiased judiciary to apply them, true equality before the law will be thwarted if people cannot invoke the laws for their protection. For persons without access, our system provides no justice at all, a situation that may be far worse than one in which the laws expressly favor some and disfavor others.

(g) Many judicial leaders acknowledge that the disparity in outcomes is so great that indigent parties who lack representation regularly lose cases that they would win if they had counsel. A growing body of empirical research confirms the widespread perception that parties who attempt to represent themselves are likely to lose, regardless of the merits of their case, particularly when the opposing party has a lawyer, while parties represented by counsel are far more likely to prevail. Judicial leaders and scholars also believe that the presence of counsel encourages settlements. Just as importantly, court opinion surveys show that more than two-thirds of Californians believe low-income people usually receive worse outcomes in court than others. Unfairness in court procedures and outcomes, whether real or perceived, threatens to undermine public trust and confidence in the courts. The sense that court decisions are made through a process that is fair and just, both in substance and procedure, strongly affects public approval and confidence in California courts. As many legal and judicial leaders have noted, the combined effect of widespread financial inability to afford representation coupled with the severe disadvantages of appearing in court without an attorney foster a destructive perception that money drives the judicial system. Respect for the law and the legal system is not encouraged if the public perceives, rightly or wrongly, that justice is mainly for the wealthy.

(h) Equal access to justice without regard to income is a fundamental right in a democratic society. It is essential to the enforcement of all other rights and responsibilities in any society governed by the rule of law. It also is essential to the public's confidence in the legal system and its ability to reach just decisions.

(i) The adversarial system of justice relied upon in the United States inevitably allocates to the parties the primary responsibility for discovering the relevant evidence, finding the relevant legal principles, and presenting them to a neutral judge or jury. Discharging these responsibilities generally requires the knowledge and skills of a legally trained professional. The absence of representation not only disadvantages parties, it has a negative effect on the functioning of the judicial system. When parties lack legal counsel, courts must cope with the need to provide guidance and assistance to ensure that the matter is properly administered and the parties receive a fair trial or hearing. Those efforts,

however, deplete scarce court resources and negatively affect the court's ability to function as intended, including causing erroneous and incomplete pleadings, inaccurate information, unproductive court appearances, improper defaults, unnecessary continuances, delays in proceedings for all court users, and other problems that can ultimately subvert the administration of justice.

(j) Because in many civil cases lawyers are as essential as judges and courts to the proper functioning of the justice system, the state has just as great a responsibility to ensure adequate counsel is available to both parties in those cases as it does to supply judges, courthouses, and other forums for the hearing of those cases.

(k) Many of those living in this state cannot afford to pay for the services of lawyers when needed for them to enjoy fair and equal access to justice. In some cases, justice is not achievable if one side is unrepresented because the parties cannot afford the cost of representation. The guarantees of due process and equal protection as well as the common law that serves as the rule of decision in California courts underscore the need to provide legal representation in critical civil matters when parties cannot afford the cost of retaining a lawyer. In order for those who are unable to afford representation to exercise this essential right of participants in a democracy, to protect their rights to liberty and property, and to the pursuit of basic human needs, the state has a responsibility to provide legal counsel without cost. In many cases decided in the state's adversarial system of civil justice the parties cannot gain fair and equal access to justice unless they are advised and represented by lawyers. In other cases, there are some forums in which it may be possible for most parties to have fair and equal access if they have the benefit of representation by qualified nonlawyer advocates, and other forums where parties can represent themselves if they receive self-help assistance.

(l) The state has an interest in providing publicly funded legal representation and nonlawyer advocates or self-help advice and assistance, when the latter is sufficient, and doing so in a cost-effective manner by ensuring the level and type of service provided is the lowest cost type of service consistent with providing fair and equal access to justice. Several factors can affect the determination of when representation by an attorney is needed for fair and equal access to justice and when other forms of assistance will suffice. These factors include the complexity of the substantive

law, the complexity of the forum's procedures and process, the individual's education, sophistication, and English language ability, and the presence of counsel on the opposing side of the dispute.

(m) If those advised, assisted, or represented by publicly funded lawyers are to have fair and equal access to justice, those lawyers must be as independent, ethical, and loyal to their clients as those serving clients who can afford to pay for counsel.

(n) The services provided for in Section 5 of this act are not intended to, and shall not, supplant legal services resources from any other source. This act does not entitle any person to receive services from a particular legal services provider, nor shall this act override the local or national priorities of existing legal services programs. The services provided for in Section 5 of this act are likewise not intended to undermine any existing pilot programs or other efforts to simplify court procedures or provide assistance to unrepresented litigants. Furthermore, nothing in this act shall be construed to prohibit the provision of full legal representation or other appropriate services funded by another source.

SEC. 2. In light of the large and ongoing justice gap between the legal needs of low-income Californians and the legal resources available to meet those needs, it is the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

SEC. 3. Article 9.6 (commencing with Section 6159.5) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

#### Article 9.6. Legal Aid Organizations

6159.5. The Legislature hereby finds and declares all of the following:

(a) Legal aid programs provide a valuable service to the public by providing free legal services to the poor.

(b) Private, for-profit organizations that have no lawyers have been using the name "legal aid" in order to obtain business from people who believe they are obtaining services from a nonprofit legal aid organization.



(c) Public opinion research has shown that the term “legal aid” is commonly understood by the public to mean free legal assistance for the poor.

(d) Members of the public seeking free legal assistance are often referred by telephone and other directory assistance information providers to for-profit organizations that charge a fee for their services, and there are a large number of listings in many telephone directories for “legal aid” that are not nonprofit but are actually for-profit organizations.

(e) The Los Angeles Superior Court has held that there is a common law trademark on the name “legal aid,” which means legal services for the poor provided by a nonprofit organization.

(f) The public will be benefited if for-profit organizations are prohibited from using the term “legal aid,” in order to avoid confusion.

6159.51. For purposes of this article, “legal aid organization” means a nonprofit organization that provides civil legal services for the poor without charge.

6159.52. It is unlawful for any person or organization to use the term “legal aid,” “legal aide,” or any confusingly similar name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless the person or organization is a legal aid organization subject to fair use principles for nominative, descriptive, or noncommercial use.

6159.53. (a) Any consumer injured by a violation of Section 6159.52 may file a complaint and seek injunctive relief, restitution, and damages in the superior court of any county in which the defendant maintains an office, advertises, or is listed in a telephone directory.

(b) A person who violates Section 6159.52 shall be subject to an injunction against further violation of Section 6159.52 by any legal aid organization that maintains an office in any county in which the defendant maintains an office, advertises, or is listed in a telephone directory. In an action under this subdivision, it is not necessary to allege or prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed.

(c) Reasonable attorney’s fees shall be awarded to the prevailing plaintiff in any action under this section.

SEC. 4. Section 68085.1 of the Government Code is amended to read:

68085.1. (a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150, 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of, subdivision (g) of Section 411.20 and subdivisions (c) and (g) of Section 411.21 of, and Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

(2) Section 3112 of the Family Code.

(3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected,

each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(E) Commencing July 1, 2011, to the Trial Court Trust Fund, as described in subdivision (d) of Section 70626, to be used by the Judicial Council to implement and administer the civil representation pilot program under Section 68651.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the

receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the State Court Facilities Construction Fund, the Judges' Retirement Fund, and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5, as described in Sections 68085.3, 68085.4, and 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, subdivision (d) of Section 68511.3 and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the Probate Code shall be added to the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a

provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, no agency may take action to change the amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to 1 ½ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty shall be paid by the county to the Trial Court Trust Fund no later than

45 days after the end of the month in which the penalty was calculated.

(l) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 68085.1 is added to the Government Code, to read:

68085.1. (a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150, 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of, subdivision (g) of Section 411.20 and subdivisions (c) and (g) of Section 411.21 of, and Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

(2) Section 3112 of the Family Code.

(3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after

collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the Administrative Office of the Courts shall make the following distributions:

(A) To the small claims advisory services, as described in subdivision (f) of Section 116.230 of the Code of Civil Procedure.

(B) To dispute resolution programs, as described in subdivision (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

(C) To the county law library funds, as described in Sections 116.230 and 116.760 of the Code of Civil Procedure, subdivision (b) of Section 68085.3, subdivision (b) of Section 68085.4, and Section 70621 of this code, and Section 14607.6 of the Vehicle Code.

(D) To the courthouse construction funds in the Counties of Riverside, San Bernardino, and San Francisco, as described in Sections 70622, 70624, and 70625.

(2) If any distribution under this subdivision is delinquent, the Administrative Office of the Courts shall add a penalty to the distribution as specified in subdivision (i).

(d) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the amounts remaining after the distributions in subdivision (c) shall be transmitted to the State Treasury for deposit in the Trial Court Trust Fund and other funds as required by law. This remittance shall be accompanied by a remittance advice identifying the

collection month and the appropriate account in the Trial Court Trust Fund or other fund to which it is to be deposited. Upon the receipt of any delinquent payment required under this subdivision, the Controller shall calculate a penalty as provided under subdivision (i).

(e) From the money transmitted to the State Treasury under subdivision (d), the Controller shall make deposits as follows:

(1) Into the State Court Facilities Construction Fund, the Judges' Retirement Fund, and the Equal Access Fund, as described in subdivision (c) of Section 68085.3 and subdivision (c) of Section 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5, as described in Sections 68085.3, 68085.4, and 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, subdivision (d) of Section 68511.3 and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the Probate Code shall be added to the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full



distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, no agency may take action to change the amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to 1 ½ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty shall

be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(l) This section shall become operative on July 1, 2017.

SEC. 6. Chapter 2.1 (commencing with Section 68650) is added to Title 8 of the Government Code, to read:

#### CHAPTER 2.1. CIVIL LEGAL REPRESENTATION

68650. This chapter shall be known, and may be cited, as the Sargent Shriver Civil Counsel Act.

68651. (a) Legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those specified courts selected by the Judicial Council as provided in this section.

(b) (1) Subject to funding specifically provided for this purpose pursuant to subdivision (d) of Section 70626, the Judicial Council shall develop one or more model pilot projects in selected courts pursuant to a competitive grant process and a request for proposals. Projects authorized under this section shall provide representation of counsel for low-income persons who require legal services in civil matters involving housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child, as well as providing court procedures, personnel, training, and case management and administration methods that reflect best practices to ensure unrepresented parties in those cases have meaningful access to justice, and to gather information on the outcomes associated with providing these services, to guard against the involuntary waiver of those rights or their disposition by default. These pilot projects should be designed to address the substantial inequities in timely and effective access to justice that often give rise to an undue risk of erroneous decision because of the nature and complexity of the law and the proceeding or disparities between the parties in education, sophistication, language proficiency, legal representation, access to self-help, and alternative dispute resolution services. In order to ensure that the scarce funds available for the program are used to serve the most critical cases and the parties least able to access the courts without

representation, eligibility for representation shall be limited to clients whose household income falls at or below 200 percent of the federal poverty level. Projects shall impose asset limitations consistent with their existing practices in order to ensure optimal use of funds.

(2) (A) In light of the significant percentage of parties who are unrepresented in family law matters, proposals to provide counsel in child custody cases should be considered among the highest priorities for funding, particularly when one side is represented and the other is not.

(B) Up to 20 percent of available funds shall be directed to projects regarding civil matters involving actions by a parent to obtain sole legal or physical custody of a child. This subparagraph shall not apply to distributions made pursuant to paragraph (3).

(3) For the 2012–13 fiscal year, and each subsequent fiscal year, any amounts collected pursuant to subdivision (d) of Section 70626 in excess of the total amount transferred to the Trial Court Trust Fund in the 2011–12 fiscal year pursuant to subparagraph (E) of paragraph (1) of subdivision (c) of Section 68085.1 and subdivision (d) of Section 70626 shall be distributed by the Judicial Council without regard to subparagraph (B) of paragraph (2). Those amounts may be distributed by the Judicial Council as set forth in this subdivision beginning July 1, 2012. If the funds are to be distributed to new projects, the Judicial Council shall distribute those amounts pursuant to the process set forth in this subdivision.

(4) Each project shall be a partnership between the court, a qualified legal services project, as defined by subdivision (a) of Section 6213 of the Business and Professions Code, that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The lead legal services agency shall be the central point of contact for receipt of referrals to the project and to make determinations of eligibility based on uniform criteria. The lead legal services agency shall be responsible for providing representation to the clients or referring the matter to one of the organization or individual providers with whom the lead legal services agency contracts to provide the service. Funds received by a qualified legal services project shall not qualify as expenditures for the purposes of the distribution of funds pursuant to Section 6216 of the Business and Professions Code. To the

extent practical, the lead legal services agency shall identify and make use of pro bono services in order to maximize available services efficiently and economically. Recognizing that not all indigent parties can be afforded representation, even when they have meritorious cases, the court partner shall, as a corollary to the services provided by the lead legal services agency, be responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices to ensure unrepresented parties meaningful access to justice and to guard against the involuntary waiver of rights, as well as to encourage fair and expeditious voluntary dispute resolution, consistent with principles of judicial neutrality.

(5) The participating projects shall be selected by a committee appointed by the Judicial Council with representation from key stakeholder groups, including judicial officers, legal services providers, and others, as appropriate. The committee shall assess the applicants' capacity for success, innovation, and efficiency, including, but not limited to, the likelihood that the project would deliver quality representation in an effective manner that would meet critical needs in the community and address the needs of the court with regard to access to justice and calendar management, and the unique local unmet needs for representation in the community. Projects approved pursuant to this section shall initially be authorized for a three-year period, commencing July 1, 2011, subject to renewal for a period to be determined by the Judicial Council, in consultation with the participating project in light of the project's capacity and success. After the initial three-year period, the Judicial Council shall distribute any future funds available as the result of the termination or nonrenewal of a project pursuant to the process set forth in this subdivision. Projects shall be selected on the basis of whether in the cases proposed for service the persons to be assisted are likely to be opposed by a party who is represented by counsel. The Judicial Council shall also consider the following factors in selecting the projects:

(A) The likelihood that representation in the proposed case type tends to affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a matter in which they would otherwise frequently have judgment entered against them or suffer the deprivation of the basic human need at issue.

(B) The likelihood of reducing the risk of erroneous decision.

(C) The nature and severity of potential consequences for the unrepresented party regarding the basic human need at stake if representation is not provided.

(D) Whether the provision of legal services may eliminate or reduce the potential need for and cost of public social services regarding the basic human need at stake for the client and others in the client's household.

(E) The unmet need for legal services in the geographic area to be served.

(F) The availability and effectiveness of other types of court services, such as self-help.

(6) Each applicant shall do all of the following:

(A) Identify the nature of the partnership between the court, the lead legal services agency, and the other agencies or other providers that would work within the project.

(B) Describe the referral protocols to be used, the criteria that would be employed in case assessment, why those cases were selected, the manner to address conflicts without violating any attorney-client privilege when adverse parties are seeking representation through the project, and the means for serving potential clients who need assistance with English.

(C) Describe how the project would be administered, including how the data collection requirements would be met without causing an undue burden on the courts, clients, or the providers, the particular objectives of the project, strategies to evaluate their success in meeting those objectives, and the means by which the project would serve the particular needs of the community, such as by providing representation to limited-English-speaking clients.

(7) To ensure the most effective use of the funding available, the lead legal services agency shall serve as a hub for all referrals, and the point at which decisions are made about which referrals will be served and by whom. Referrals shall emanate from the court, as well as from the other agencies providing services through the program, and shall be directed to the lead legal services agency for review. That agency, or another agency or attorney in the event of conflict, shall collect the information necessary to assess whether the case should be served. In performing that case assessment, the agency shall determine the relative need for representation of the litigant, including all of the following:

(A) Case complexity.

- (B) Whether the other party is represented.
  - (C) The adversarial nature of the proceeding.
  - (D) The availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case.
  - (E) Language issues.
  - (F) Disability access issues.
  - (G) Literacy issues.
  - (H) The merits of the case.
  - (I) The nature and severity of potential consequences for the potential client if representation is not provided.
  - (J) Whether the provision of legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the potential client's household.
- (8) If both parties to a dispute are financially eligible for representation, each proposal shall ensure that representation for both sides is evaluated. In these and other cases in which conflict issues arise, the lead legal services agency shall have referral protocols with other agencies and providers, such as a private attorney panel, to address those conflicts.
- (9) Each pilot project shall be responsible for keeping records on the referrals accepted and those not accepted for representation, and the reasons for each, in a manner that does not violate any privileged communications between the agency and the prospective client. Each pilot project shall be provided with standardized data collection tools, and required to track case information for each referral to allow the evaluation to measure the number of cases served, the level of service required, and the outcomes for the clients in each case. In addition to this information on the effect of the representation on the clients, data shall be collected regarding the outcomes for the trial courts.
- (10) A local advisory committee shall be formed for each pilot project, to include representatives of the bench and court administration, the lead legal services agency, and the other agencies or providers that are part of the local project team. The role of the advisory committee is to facilitate the administration of the local pilot project, and to ensure that the project is fulfilling its objectives. In addition, the committee shall resolve any issues that arise during the course of the pilot project, including issues concerning case eligibility, and recommend changes in project

administration in response to implementation challenges. The committee shall meet at least monthly for the first six months of the project, and no less than quarterly for the duration of the pilot period. Each authorized pilot project shall catalog changes to the program made during the three-year period based on its experiences with best practices in serving the eligible population.

(c) The Judicial Council shall conduct a study to demonstrate the effectiveness and continued need for the pilot program established pursuant to this section and shall report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016. The study shall report on the percentage of funding by case type and shall include data on the impact of counsel on equal access to justice and the effect on court administration and efficiency, and enhanced coordination between courts and other government service providers and community resources. This report shall describe the benefits of providing representation to those who were previously not represented, both for the clients and the courts, as well as strategies and recommendations for maximizing the benefit of that representation in the future. The report shall describe and include data, if available, on the impact of the pilot program on families and children. The report also shall include an assessment of the continuing unmet needs and, if available, data regarding those unmet needs.

(d) This section shall not be construed to negate, alter, or limit any right to counsel in a criminal or civil action or proceeding otherwise provided by state or federal law.

(e) The section shall become operative on July 1, 2011.

SEC. 7. Section 70626 of the Government Code is amended to read:

70626. (a) The fee for each of the following services is twenty-five dollars (\$25). Subject to subdivision (d), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing any certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is thirty dollars (\$30). Subject to subdivision (d), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.



(10) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) From July 1, 2011, to June 30, 2017, inclusive, ten dollars (\$10) of each fee collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program under Section 68651.

(e) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 70626 is added to the Government Code, to read:

70626. (a) The fee for each of the following services is fifteen dollars (\$15). Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing any certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is twenty dollars (\$20). Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.

(10) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) This section shall become operative on July 1, 2017.











Approved \_\_\_\_\_, 2009

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*Governor*